

State-County Functions Working Group (Transient Accommodations Tax)

(Established by Act 174, Session Laws of Hawai'i 2014)

State of Hawai'i

<http://auditor.hawaii.gov/>

Minutes of Meeting

Date: Wednesday, November 5, 2014

Time: 10:00 a.m.

Place: State Capitol
415 S. Beretania Street
Conference Room 414
Honolulu, Hawai'i

Present: Simeon R. Acoba, Chair, Chief Justice Appointment
Sananda Baz, County of Maui Appointment
Mary Alice Evans, Governor Appointment
Steven Hunt, County of Kaua'i Appointment
George Kam, Senate Appointment
Neal Miyahira, Governor Appointment
Deanna Sako, County of Hawai'i Appointment
Ray Soon, City and County of Honolulu Appointment
George Szigeti, House Appointment
Ronald Williams, Senate Appointment
Kerry Yoneshige, Governor Appointment

Jan K. Yamane, Acting State Auditor, Office of the Auditor
Jayna Oshiro, Analyst, Office of the Auditor
Pat Mukai, Secretary, Office of the Auditor

Dan Quinn, Department of Land and Natural Resources (in the absence of Jesse Souki)
Dan Purcell

Excused: Ed Case, House Appointment
Jesse Souki, Governor Appointment

I. Call to Order: Chair Acoba called the meeting to order at 10:00 a.m., at which time quorum was established. The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Hawai'i Revised Statutes, Section 92-7(b).

II. Public Testimony

Dan Purcell stated that he did not have any written statement. He does not know whether the Working Group is subject to Executive Memorandum 11-11, which requires most state boards and commissions to post agendas to the State online calendar, but encouraged the Working Group to post its agendas to the State online calendar.

III. a. Announcements, introductions, correspondence, and additional distribution

(i) Relevant acts and committee reports on transient accommodations tax (handouts – information only)

Chair Acoba provided an overview of the legislative history of the transient accommodations tax (TAT). The following acts and committee reports were discussed:

- 1) House Bill 1148 was introduced during the 1989 legislative session. However, the bill was gutted and replaced with the contents of Senate Bill 2919, SD2 that was later enacted as Act 185 in 1990. The purpose of Act 185 is to share with the counties revenues generated by the TAT, but it doesn't state whether the purpose of the TAT revenue is a revenue sharing device or a reimbursement to the counties for expenditures related to tourism. Section 2 of the Act outlined the distribution of the TAT as follows: 5 percent retained by the State for administrative costs; and the remainder distributed to the counties (Kaua'i county-14.5 percent; Hawai'i county-18.6 percent; City and County of Honolulu-44.1 percent; and Maui county-22.8 percent).

Conference Committee Report No. 207 on HB 1148 noted that the bill was amended to allow the counties to use the TAT revenues for any county purpose. Chair Acoba stated that it does not establish any specific connection with expenditures having to do with tourism. The report also noted that sharing the TAT revenues with the counties by distributing the revenues among the counties in proportion to the population of each county would best accomplish the intent of the measure in an equitable manner. Further, this method provides the counties with a predictable, flexible, and permanent source of revenues.

Chair Acoba stated that the committee report refers to population as a basis for the distribution of the TAT revenues to the counties. Acting State Auditor Jan Yamane stated that a review of the Department of Business, Economic Development (DBEDT) data book on population does not correlate with the distribution amounts to the counties. However, a review of visitor arrivals per county did correlate with the distribution.

Member Williams stated that the numbers originally started as a formula. However, for the counties of Kaua'i and the Big Island, the numbers did not correlate so adjustments may have been made that would have thrown off the model. He suggested speaking with Mike McCartney of the Hawai'i Tourism Authority (HTA) for insight.

- 2) Act 103 (SLH 2011): The distribution of revenue to the counties remained the same at 44.8 percent, capped at \$93 million beginning July 1, 2011 and ending on June 30, 2015. Conference Committee Report No. 139 reflected these amendments.
- 3) Act 161 (SLH 2013): The TAT rate of 9.25 percent was made permanent. Also the act allocated \$93 million, rather than 44.8 percent, of the TAT revenue to the counties. Conference Committee Report No. 146 reflected these amendments.
- 4) Act 174 (SLH 2014): The Act directs the Working Group to evaluate the division of duties and responsibilities between the State and counties relating to the provision of public services—generally to define what public services are, to determine or evaluate how it is divided between the State and counties, and to submit a recommendation on the appropriate allocation of the TAT between the State and counties. Chair Acoba stated that it's a broader mandate than just looking at the effect of tourism on the State and counties.

Member Soon stated on behalf of the City and County of Honolulu, they would like to submit a minority report because it ties the recommendation to the appropriate distribution of functions and responsibilities. He said that the county does not think that it should be the rationale for distribution and that the rationale should be around tourism and the needs and capacity to raise their own funds. He further stated that the final formula should be more complex.

Chair acknowledged Member Soon, but hopes opinions can be expressed in one report.

- (ii). Working Group calendar (2014-2016) (hand-out – information only)

A calendar for 2014-2016 was distributed. The calendar contains meeting dates and informal deadlines, all of which may be subject to modification.

- b. Minutes of previous meeting

Member Evans offered a nonsubstantive correction to the Introductions section on page 2, that the last sentence under her name be deleted. It was moved by Member Hunt, seconded by Member Yoneshige, and unanimously carried to approve the minutes of the October 22, 2014 meeting, as amended.

IV. Interim Report to the 2015 Legislature

- a. Draft outline (hand-out – information only)

- (i) Background information (hand-out – information only)

A draft interim report was provided to the members for their review. The draft interim report was prepared by the Auditor's Office and is a work in progress. The Working Group provided the following comments:

- 1) Page 6, Exhibit 2 TAT Collection and Rates, FY2004-FY2013: Acting State Auditor Yamane stated that the exhibit was pulled from the Department of Taxation's (DoTAX) Annual Report 2012-2013. She explained that the Auditor's Office will try to superimpose the TAT rates across the top of the chart.

Members suggested including the TAT amounts from inception, FY1987, through FY2014. Chair Acoba requested that the Auditor's Office make a request to DoTAX for the information. If DoTAX does not provide the data by the December 3, 2014 meeting, the data will not be included in the draft report but will be included in the final report.

- 2) Page 11, last bullet point: Dan Quinn of Department of Land and Natural Resources (DLNR) stated that the language regarding the \$3 million of the excess TAT revenues allocated to the general fund for natural resources should be deposited instead of allocated to the general fund. Although the statute states the funds are to be deposited for natural resources, DLNR is unable to access the funds. Mr. Quinn also reported that DLNR has discussed this issue with HTA and suggested that the report reflect that DLNR has not been able to access the funds. Member Miyahira confirmed that once the moneys are in the general fund, an appropriation is needed. However, there was no appropriation for DLNR to use the moneys. DLNR is working with HTA on a legislative fix.

Acting State Auditor Yamane requested a statement in writing from DLNR so a footnote can be included.

Chair Acoba stated that upon receipt of the information from DLNR, a footnote will be appended to this bullet point. Chair Acoba requested that the statement be not more than 25 words and received by the December 3, 2014 meeting.

- 3) Page 12, second paragraph: After discussion, members agreed to delete the last sentence.
- 4) Page 14, Exhibit 3 TAT Distributions, FY2004-2013: Acting State Auditor Yamane stated that the exhibit was also pulled from the DoTAX Annual Report 2012-2013. The Auditor's Office will make the same request to DoTAX for additional data as made for Exhibit 2.

(ii) Discussion of Working Group objectives by 2014 year-end and for 2015

For 2014, the Working Group has reviewed the legislative history of the TAT including the relevant acts and committee reports. The Working Group's approach for 2015 is discussed in the Methodology/Approaches/Consultant section below.

V. Methodology/Approaches/Consultant – Discussion

The Working Group discussed various approaches in evaluating the division of duties and responsibilities among the State and counties relating to public services, as required by Act 174, (SLH 2014). The following are some of the topics and issues discussed by the members:

1) Act 174 (SLH 2014)

Chair Acoba stated that in Conference Committee Report No. 145-14 on House Bill 1671, HD1, SD1, CD1, the purpose of the measure is to change the amount of TAT revenues allocated to the counties from \$93 million to an unspecified percentage of revenues collected. The Legislature is looking for a recommendation from the Working Group that would be on a percentage basis. Chair Acoba explained that a percentage basis makes sense because it will not vary depending on how much revenues are generated or whether there is a reduction in revenues. Some of the county members agreed that it should be a set percentage instead of a straight dollar cap because the level of revenue is based on the level of visitor activity.

Chair Acoba noted that the conference committee report also states that a study to determine the appropriate division of duties and responsibilities to provide public services should be conducted before permanently establishing the TAT revenue allocations between the State and counties. The Legislature will have the final determination as to what the allocations will be. However, as a pre-requisite to that determination, the Legislature needs this study done by the Working Group. The Working Group's information will be the foundation for the Legislature.

Member Yoneshige asked how do you split the responsibilities between the State and counties? He said the allocation between the State and counties is a big challenge because public service is so wide. The first step between the State and counties is to identify the services provided to get some kind of basis to come up with the allocation. However, he said he was not sure how to address it to get some rational and logical methodology.

Chair Acoba suggested that the Working Group explore the division of public services as it is set out in the statute. Member Miyahira also suggested looking at it in the context relating to tourism.

Member Evans suggested that part of the Working Group's approach should be to evaluate the division of duties and responsibilities, which is a broad topic.

Chair Acoba also suggested that since Act 185 (SLH 1990) discussed population, the Working Group may want to consider different standards, guidelines, and formulas, such as population and tourist expenditures. Some of the county members disagreed with including population.

Member Soon proposed that the Working Group not revisit the distribution within the counties and stay focused on the distribution to the counties.

Member Miyahira was excused at 11:16 a.m.

Member Baz stated that from a budget perspective there is always the revenue side at the state and county levels that are significantly different and can be part of the approach. The state budget has different revenue sources. When a visitor arrives, they are paying GE (general excise) tax and TAT. However, at the county level, visitors are only paying for TAT. The hotels are paying real property taxes and this is a whole different story. He asked if the Working Group is looking at the expenditure side, do we want to start discussing the revenue picture.

Member Sako suggested keeping the approach broad because the more research we do and more information we receive, we may end up being all over the place.

Acting State Auditor Yamane recapped the discussion for the draft interim report. She stated that the Working Group reviewed the legislative history and relevant acts and committee reports relating to the TAT and will explore the division of public services, taking into consideration various standards and guidelines.

2) Consultant

Acting State Auditor Yamane reported that prior Working Groups and task forces used consultants and that costs vary widely. She reiterated to the Working Group that as discussed at the last meeting, Act 174 (SLH 2014) does not include an appropriation. Therefore, the Auditor's Office needs to submit in its budget for the next year the costs of the Working Group, including a consultant. All moneys left unspent will lapse to the general fund.

Member Yoneshige suggested for the budget, the Working Group is looking at the identification of responsibility of public services provided. His thought is to have an independent third-party consultant engaged to do the high level identification work on the division of responsibility. It will be up to the Working Group to accept that study and build from it. He said that it may help to start the discussions on the identification of appropriate services to include or not include in the allocation—it may be quite expensive.

Member Williams suggested looking at a commonality, such as natural resources or provided services.

Member Sako agreed to include something in the budget just in case the Working Group may need someone to assist in compiling data.

It was moved by Member Williams, seconded by Member Baz, to include a \$100,000 in the budget for consultant services.

Member Szigeti was excused at 11:29 a.m.

After discussion, the motion was amended and unanimously carried to approve \$150,000 instead of \$100,000 for consultant services.

Member Yoneshige stated that the consultant can gather information and suggest formulas; however, the ultimate conclusions will be drawn by the Working Group.

National Conference of State Legislatures (NCSL)

Acting State Auditor Yamane stated that the Auditor's Office received information from NCSL on which states have TAT or occupancy tax. This information will be distributed to the members at a later meeting.

Methodology and Approaches

Member Soon stated that he likes the approach discussed and supports the words in the report. However, he feels the Working Group needs to get to the specifics. He stated that if the Working Group is to direct a consultant to be gathering and normalizing data between the counties and the State, we need to know why the data is being gathered.

Member Soon asked members with ideas on approaches to prepare a white paper to circulate for discussion.

Acting State Auditor Yamane explained that procurement of a consultant takes about three months. If the Working Group moves ahead with a Request for Proposals (RFP), the earliest the consultant will be on board is March 2015, which will give the consultant 3-4 months of good hard work before the Working Group sees any draft reporting.

Consultant Services

Chair Acoba asked the Working Group for suggestions on what types of information they would like the consultant to gather.

Member Sako mentioned the responsibilities, or the public activity between the state and counties, is one of the first pieces the group should look at. Member Baz agreed and stated what the counties do is delineated in the Constitution and county charters. The counties can assist in gathering information on the counties' activities.

Chair Acoba suggested that the consultant may be able to help define *public service*.

Member Hunt suggested the idea of allocating by tourism, such as by each island's arrivals and expenditures. Chair Acoba suggested the Working Group look at each island's visitor arrivals and visitor expenditures, versus the total state arrivals and expenditures.

Chair Acoba stated that there must be different approaches on allocating services generally as opposed to just tourism activities. Member Soon said Honolulu is the most complex—there are gradients of services with a strong nexus to tourism, moderate nexus, thin nexus, or no nexus. Member Hunt stated we can look at each item on a cost basis. Determining gradients—that is, adding/allocating portions—is a challenge.

Chair Acoba suggested that the formula should be something workable and fairly easy to administer. Acting State Auditor Yamane asked members for methodologies to use for the RFP specifications.

Member Williams asked whether to include the revenue side of the nexus. He suggested if the Working Group look at expenses to evaluate the true cost of what is going on. The nexus should be a balance between the revenues and the roles and responsibilities.

Member Soon was excused at 11:46 a.m.

VI. Adjournment: With no further business to discuss, Chair Acoba adjourned the meeting at 11:47 a.m.

Reviewed and approved by:

Jan K. Yamane
Acting State Auditor

[] Approved as circulated.

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